

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54508; File No. SR-ISE-2006-44]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Expand the Broker Marketing Alliance To Include Non- Broker-Dealers With Regard to the Enhanced Sentiment Market Data Offering

September 26, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 2006, the International Securities Exchange, Inc. (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees regarding the enhanced sentiment market data offering to expand the Broker Marketing Alliance by eliminating its limitation to only broker-dealers. The text of the proposed rule change is available at the ISE, at the Commission’s Public Reference Room, and at <http://www.iseoptions.com>.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The ISE is proposing to amend its Schedule of Fees regarding the enhanced sentiment market data offering.<sup>3</sup> Specifically, the Exchange proposes to expand the Broker Marketing Alliance by eliminating its limitation to only broker-dealers. The Exchange’s enhanced sentiment market data offering, and the Broker Marketing Alliance, was previously approved by the Commission.<sup>4</sup> A Broker Marketing Alliance is an arrangement between ISE and a participating U.S. broker-dealer that markets the enhanced sentiment offering to its customers. A Broker Marketing Alliance enables a participating U.S. broker-dealer to participate in a revenue sharing arrangement with the Exchange for each of their referred customers that subscribes to the enhanced sentiment offering. Additionally, broker-dealers receive a rebate of 35% of the subscription fee collected from subscribers. An additional bonus rebate may also be paid to broker-dealers for achieving subscription levels based on the size of their firm and the number of clients that subscribe to the service.

Since the introduction of this market data offering, the Exchange has received interest from many non-broker-dealers seeking to participate in an arrangement similar to the Broker Marketing Alliance. These non-broker-dealers, including firms that provide investors with market commentary, investment tools and educational materials, have expressed an interest to sell subscriptions to this offering. If the Commission approves this proposed rule change, the Exchange will be able to enter into a marketing alliance agreement with both broker-dealers and non-broker-dealers. As before, such an agreement will enable both broker-dealers and non-broker-dealers to participate in a revenue sharing arrangement for each of their referred customers that subscribes to the enhanced sentiment offering and potentially be paid an additional bonus rebate for achieving subscription levels based on the size of their firms and the

<sup>3</sup> The Commission notes that enhanced sentiment market data is a product that allows an end user to retrieve a sentiment value for an individual symbol using a query tool and includes a sentiment scanning tool that allows a user to comb the market for sentiment levels that meet pre-defined parameters. See Securities Exchange Act Release No. 53756 (May 3, 2006), 71 FR 27529 (May 11, 2006) (SR-ISE-2005-56).

<sup>4</sup> See *id.*

number of clients that subscribe to this market data offering.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>5</sup> which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that expanding the Broker Marketing Alliance to allow participation by non-broker-dealers provides a greater number of market participants with an opportunity to obtain enhanced sentiment market data in furtherance of their investment decisions.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2006-44 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2006-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2006-44 and should be submitted on or before October 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-16249 Filed 10-2-06; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54511; File No. SR-PCX-2005-53]

**Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 To Create a New Order Type—Passive Liquidity Orders—for Use on NYSE Arca Marketplace**

September 26, 2005.

**I. Introduction**

On April 15, 2005, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) ("NYSE Arca" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. (n/k/a "NYSE Arca Equities, Inc."), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to create a new order type, the Passive Liquidity Order ("PL Order"), for use on NYSE Arca, LLC (f/k/a the Archipelago Exchange) ("NYSE Arca Marketplace"). The Exchange filed Amendment No. 1 to the proposed rule change on June 3, 2005.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposed rule change on August 26, 2005.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on September 21, 2005.<sup>5</sup> The Commission received 2 comments from the public in response to the proposed rule change.<sup>6</sup> The Exchange filed Amendment No. 3 to the proposed rule change on December 1, 2005.<sup>7</sup> The Exchange filed

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1, which replaced the original filing, made technical and clarifying changes to the proposed rule change.

<sup>4</sup> Amendment No. 2, which replaced Amendment No. 1, clarified the execution priority of Passive Liquidity Orders by NYSE Arca Equities Rule 7.37, as compared to other orders that are part of the Display Order Process and the Working Order Processes, and as compared to Directed Fills in the Display Order Process. In addition, Amendment No. 2 made other technical and clarifying changes to the proposed rule change.

<sup>5</sup> See Securities Exchange Act Release No. 52436 (September 14, 2005, 70 FR 55441).

<sup>6</sup> See letter from George U. Sauter, Managing Director, the Vanguard Group, Inc., to Jonathan G. Katz, Secretary, Commission, dated October 12, 2005 ("Vanguard letter"). See also letter from Neal L. Wolkoff, Chairman and CEO, American Stock Exchange LLC, to Jonathan G. Katz, Secretary, Commission, dated June 28, 2005 ("Amex Letter").

<sup>7</sup> Amendment No. 3 proposed that in securities where the NYSE Arca Marketplace is the primary

Amendment No. 4 to the proposed rule change on August 28, 2006.<sup>8</sup> This order approves the proposed rule, as amended by Amendment Nos. 1 and 2; grants accelerated approval to Amendment Nos. 3 and 4; and solicits comments from interested persons on Amendment Nos. 3 and 4.

**II. Description**

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to establish a new order type, the PL Order. The PL Order would be an order to buy or sell a stated number of shares of a security at a specified, undisplayed price.

Under the proposal, PL Orders would be entered with a size of at least 200 shares and would only be permitted in round lot denominations. PL Orders would not route out of NYSE Arca Marketplace to other Market Centers<sup>9</sup> and would not execute against incoming orders sent from other markets.

The NYSE Arca Marketplace ranks and maintains limit orders in the NYSE Arca Marketplace Order Book ("NYSE Arca Book") according to price/time priority and generally affords priority to displayed orders in the Display Order Process and prices over undisplayed orders in the Working Order Process, sizes and prices. However, PL Orders with a price superior to that of displayed orders would have price priority and would execute ahead of inferior priced displayed orders in the Display Order Process. A PL Order would be executed in the Working Order Process after all other orders, including Reserve Orders and the display portion of Discretionary Orders at a particular price level, but would have priority over undisplayed Discretionary Order interest. In addition, PL Orders with a price superior to that of Directed Fills would have price priority and would execute ahead of inferior priced Directed Fills in the Directed Order Process.

In Amendment No. 3, the Exchange proposed that in securities where the Exchange is the primary listings market for which an LMM has been registered, the PL Order would be available only to the LMM registered in the primary

listings market and there is a Lead Market Maker ("LMM"), the PL Order would be limited to the LMM registered in the primary listing. In exchange for this exclusive use, LMMs would be subject to performance standards, as defined by the Exchange. In Amendment No. 3, the Exchange also addressed comments made in the Vanguard Letter.

<sup>8</sup> Amendment No. 4 proposed that LMMs who are registered in the primary listing of an issue on the NYSE Arca Marketplace may execute PL Orders only if such LMMs comply with certain quotation requirements.

<sup>9</sup> 17 CFR 242.600(b)(38).

<sup>6</sup> 17 CFR 200.30-3(a)(12).